

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CUONG HUY DAO,

Plaintiff,

v.

P. TABOR, et al.,

Defendant.

No. 2:22-cv-0846-TLN-KJN

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pursuant to the mailbox rule, on February 12, 2024, Plaintiff filed a request for reconsideration of the magistrate judge's Order filed November 29, 2023, denying Plaintiff's motion to compel. (ECF Nos. 63, 78.)

Pursuant to the mailbox rule, on February 13, 2024, Plaintiff filed a pleading docketed as objections to the magistrate judge's Order filed February 1, 2024. (ECF No. 77, 79.) In the February 1, 2024 Order, the magistrate judge denied Plaintiff's request for an order directing California State Prison-Sacramento ("CSP-Sac") officials to stop tampering with plaintiff's legal mail as moot. (ECF Nos. 77, 79.) This Court construes Plaintiff's objections as a request for reconsideration of the February 1, 2024 Order.

For the reasons stated herein, Plaintiff's requests for reconsideration are DENIED.

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1 Request for Reconsideration of Order Filed November 29, 2023

2 Local Rule 303(b), states “rulings by Magistrate Judges . . . shall be final if no
3 reconsideration thereof is sought from the Court within fourteen days . . . from the date of service
4 of the ruling on the parties.” *Id.* Plaintiff’s request for reconsideration of the magistrate judge’s
5 Order of November 29, 2023, is untimely because it was filed on February 12, 2024.

6 In previous motions, Plaintiff claimed that prison officials tampered with his legal mail on
7 or around the time the magistrate judge issued the November 29, 2023 Order. (ECF Nos. 67, 70.)
8 In the pending request, Plaintiff does not explain why he did not file a timely request for
9 reconsideration of the November 29, 2023 Order. In an abundance of caution, this Court
10 considers the merits of Plaintiff’s request for reconsideration.

11 Pursuant to E.D. Local Rule 303(f), a magistrate judge’s orders shall be upheld unless
12 “clearly erroneous or contrary to law.” Upon review of the entire file, this Court finds that the
13 magistrate judge’s November 29, 2023 Order denying Plaintiff’s motion to compel was not
14 clearly erroneous or contrary to law.

15 Accordingly, Plaintiff’s request for reconsideration of the November 29, 2023 Order is
16 DENIED.

17 Request for Reconsideration of Order Filed February 1, 2024

18 On February 1, 2024, the magistrate judge denied Plaintiff’s request for an order directing
19 CSP-Sac officials to stop tampering with his legal mail as moot because Plaintiff was no longer
20 housed at CSP-Sac. (ECF No. 77.)

21 In the request for reconsideration, Plaintiff does not dispute that he is no longer housed at
22 CSP-Sac. (ECF No. 79.) Plaintiff again alleges that CSP-Sac officials tampered with his legal
23 mail.¹ (*Id.* at 2-6.)

24 In the request for reconsideration, Plaintiff also claims that on January 3, 2024, he
25 transferred to California State Prison-Lancaster (“CSP-Lac”). (*Id.* at 7.) Plaintiff alleges that

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27 ¹ This Court observes that on January 2, 2024, the magistrate judge granted Plaintiff an
28 opportunity to obtain orders and/or pleadings that Plaintiff allegedly failed to receive during
November 2023 and December 2023 while housed at CSP-Sac. (ECF No. 71 at 3.)

1 prison officials at CSP-Lac tampered with his legal mail. (Id. at 7.) Plaintiff alleges that on
2 January 23, 2024, he transferred to Salinas Valley State Prison (“SVSP”). (Id.) Plaintiff alleges
3 that prison officials at SVSP poisoned his food and assaulted him. (Id. at 7-9.) Plaintiff alleges
4 that he returned to CSP-Lac on February 9, 2024. (Id. at 10.)

5 Upon review of the entire file, this Court finds that the magistrate judge’s February 1,
6 2024 Order, denying Plaintiff’s request for an order directing CSP-Sac officials to stop tampering
7 with Plaintiff’s legal mail as moot was not clearly erroneous or contrary to law. Local Rule
8 303(f). Accordingly, Plaintiff’s request for reconsideration of the February 1, 2024 Order is
9 DENIED.

10 This Court does not consider the new claims regarding SVSP and CSP-Lac raised in the
11 request for reconsideration of the February 1, 2024 Order because these claims were not raised
12 before the magistrate judge.

13 Finally, in his request for reconsideration, Plaintiff requests appointment of counsel.
14 (ECF No. 79 at 1.) This request is referred back to the magistrate judge.

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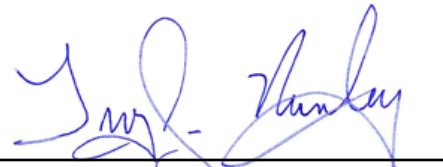
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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's Request for Reconsideration of the magistrate judge's November 29, 2023 Order denying Plaintiff's Motion to Compel (ECF No. 78) is DENIED;
2. Plaintiff's objections (ECF No. 79) construed as a Request for Reconsideration of the magistrate judge's February 1, 2024 Order denying Plaintiff's request for an order directing CSP-Sac officials to stop tampering with Plaintiff's legal mail as moot, is DENIED; and
3. This case is referred back to the magistrate judge for further pre-trial proceedings.

Date: February 29, 2024



Troy L. Nunley
United States District Judge